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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 27th December 2023

S.R.O. No. 1/2024—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 30th November 2023 passed in the ID Case No. 32 of 2021 [u/s 2-A(2)] by the Presiding Officer, Industrial Tribunal, Bhubaneswar on the industrial dispute between the Managing Director, Utkal Ayurvedic Co-op. Pharmacy Ltd., Aska, Dist. Ganjam-761110 and Shri Surendranath Patra, Aged 55 years, S/o Late Harihara Patra, Vill. Tumbakhengapalli, P.O./P.S. Aska, Dist. Ganjam-761110 is hereby published as in the schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 32 of 2021[u/s 2-A(2)]

Dated the 30th November 2023

Present :

Shri Benudhar Patra, B.S.C., LL.M.,
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

The Management of— ... First Party—Management
The Managing Director,
Utkal Ayurvedic Co-op. Pharmacy Ltd.,
Aska, Dist. Ganjam-761 110.

And

Shri Surendranath Patra, aged 55 years, ... Second Party—Workmen
S/o Late Harihara Patra,
Vill. Tumbakhengapalli,
P.O./P.S. Aska, Dist. Ganjam-761110.

Appearances :

Shri A. K. Rath, Advocate	... For the First Party—Management
Shri K. C. Mishra, Advocate	... For the Second Party—Workman

AWARD

The legality and justifiability of the order of dismissal of the second party, communicated to him vide Letter No. 473, dated the 25th December 2018, is under challenge in the present application u/s 2-A (2) of the Industrial Disputes Act, 1947(for short 'the Act'). It is stated in the application that initially the second party raised a grievance before the Assistant Labour Officer, Aska, Ganjam but as the matter could not be resolved by the labour machinery within the stipulated period of 45 days, he approached this Forum on the 8th March 2021 by filing the present application with a prayer for his reinstatement in service with all service benefits.

2. The case of the second party, in brief, is that on being appointed by the Managing Director of the first party vide office order communicated under Memo No. 285(5), dated the 21st May 1992 he worked as In-charge, Tailasala Branch and later on he was posted as Branch Manager of Balasore Branch vide office order dated the 10th May 2014. It is stated that while working as such on being directed he deposited security money of Rs. 50,000 and Rs.70,000 vide Receipt No. 2, dated the 25th September 2014 and Receipt No. 03, dated the 25th April 2014, respectively but subsequently vide Order No. 223, dated the 18th June 2018 he was placed under suspension followed by a show cause and on an explanation being submitted to the said show cause, a formal enquiry was conducted and ultimately he was dismissed from service vide Letter No. 473, dated the 25th May 2018 pursuant to the decision taken by the Board of Directors. According to the second party, his dismissal from service is in complete violation of the principles of natural justice. It is further alleged that the action of the management is not at all sustainable in the eye of law as he was denied opportunity to file appeal against his order of dismissal.

3. The first party entered contest in the dispute and filed its written statement. Admitting employment of the second party, it is stated in the written statement that during his incumbency at Balasore the second party caused shortage of cash and on detection thereof the first party initiated a departmental proceeding against him; framed charges and considering the explanation submitted by the second party held a domestic enquiry observing the principles of natural justice and ultimately basing on the enquiry report the first party dismissed him from service pursuant to the decision taken by the Committee of Management, which is competent enough to take action against any paid employee as per Section 28 of the Orissa Co-operative Societies Act,1962. It has been specifically pleaded that even though the second party admitted the imputations levelled against him, yet the management conducted an enquiry into the charges and basing on the report of the Enquiry Officer the second party was inflicted with the punishment of dismissal from service. It is averred that despite payment of subsistence allowance the second party has falsely alleged that the management had not paid the subsistence allowance during the period of his suspension. There being no infraction of the principles of natural justice either during the domestic enquiry or while imposing punishment against the proved charges of misappropriation, it is pleaded, the second party has no valid cause to file the dispute which deserves to be dismissed with cost.

4. A rejoinder is filed to the written statement wherein the second party reiterating his stand taken in the claim statement further averred that due to non-supply of a copy of the enquiry report and non-communication of a second show cause, besides not providing him an opportunity of personal hearing, the order of dismissal is not sustainable in the eye of law.

5. Basing on the pleadings of the parties, the following issues have been framed :—

ISSUES

- “(i) Whether the case is maintainable ?
- (ii) Whether the domestic enquiry conducted against the second party workman is fair and proper ?
- (iii) Whether the action of the Managing Director, Utkal Ayurvedic Co-operative Pharmacy Ltd., Aska, Dist. Ganjam in dismissing Shri Surendra Nath Patra, Branch Manager, Balasore Branch with effect from the 25th December 2018 is legal and/or justified ?
- (iv) If not, what relief the workman Shri Patra is entitled to ?”

FINDINGS

6. *Issue No. (ii)*—The issue relating to fairness and propriety of the domestic enquiry was taken up for hearing at the first instance as it is a case of dismissal preceded by a domestic enquiry. Upon hearing the parties Issue No. (ii) having been answered by the Tribunal in the affirmative in favour of the first party vide order dated the 1st July 2023, parties were afforded opportunity to adduce evidence on other issues, pursuant to which the second party examined himself as WW 1 but did not choose to adduce any documentary evidence. The management on the other hand, examined its Ex-Secretary as MW 1 and relied on documents which have been marked as Exts. P, Q, R and S.

7. *Issue No. (i)*—At the outset it needs mention that there being no dispute over the fact that the first party is an ‘industry’ and the second party is a ‘workman’ within the meaning of the Act, the proceeding as laid before this forum is maintainable. Besides, it is not in dispute that as the complaint raised by the second party before the Asst. Labour Officer, Aska, Ganjam could not be resolved within the stipulated period, the second party has approached this Tribunal by filing the present application u/s 2-A (2) of the Act, accordingly the grievance raised in the instant application is found to be maintainable.

The issue is answered accordingly in favour of the second party.

8. *Issue No. (iii)*—The legality and justifiability of the order of dismissal of the second party with effect from the 25th December 2018 is to be decided under the present issue. At the cost of repetition, it may be stated here that the domestic enquiry conducted against the second party has already been held to be fair and proper by this Tribunal under issue No. (ii).

Challenging the role of the Disciplinary Authority, it has been argued on behalf of the second party that the impugned order of dismissal is bad in law as the same was passed by the Board of Directors of the first party who is neither the appointing nor the Disciplinary Authority of the second party. It is also argued that for non-supply of a copy of the enquiry report and non-communication of a second show cause to the second party, there is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of principles of natural justice and moreover the punishment of dismissal being disproportionate to the alleged misconduct the same be declared

as illegal and unjustified and the second party be granted with the relief (s) as prayed for in the instant proceeding. Learned counsel placed reliance on judgments of our own Hon'ble High Court in the case of Hadibandhu Panigrahi V. Orissa Pollution Control Board, reported in 2016(I) OLR 1108; Jhanedranath Mohanta V. Commissioner-cum-Secretary to Govt., Home Department, Government of Odisha and others, reported in 2022(II) OLR 898 and Narayan Chandra Swain V. State of Orissa and others, reported in 2018(II) OLR 773.

Per contra, the learned counsel appearing for the management submitted that the second party having admitted the imputations levelled against him during the course of enquiry, his statement was recorded by the Enquiry Officer and after affording him with an opportunity of personal hearing a report to that effect was submitted to the Disciplinary Authority based on which the punishment of order of dismissal was imposed on him. In the wake of the above, it is contended by the learned counsel for the management that unless the delinquent employee establishes as to how he is prejudiced on account of non-furnishing a copy of the enquiry report or second show cause notice before inflicting major punishment, the order of dismissal will not be said to be vitiated in the eye of law. In support thereof, he has placed reliance on the judgment of the Hon'ble Apex Court in the case of Managing Director, ECIL, Hyderabad and others V. B. Karunakar and others, reported in (1993) 4 SCC 727 and a judgment of our own Hon'ble High Court in the case of Hadibandhu Malik V. Presiding Officer, Labour Court, reported in (2016) 08 OHC CK 0038. It is also contended by the learned counsel for the management that as contemplated in Section 28 of the OCS Act, 1962, the Committee of Management is the appointing Authority and is competent to take action against any paid employee for any misconduct and therefore, nothing wrong or illegality, as alleged, has been committed by the first party in imposing punishment after due consideration and resolution by its Committee of Management.

9. The rival submission of the parties requires a close scrutiny of the materials available on record and the point of law propounded by the Hon'ble Courts, but prior to making a detail discussion of the same it is profitable to note that the second party was charged vide Ext. A for commission of following misconducts :

- (i) misappropriation of society funds;
- (ii) negligence in duties;
- (iii) misuse of official capacity;
- (iv) disobedience of office orders; and
- (v) misconduct to the authority

Pursuant to the above imputations, the second party had also furnished his reply (Ext.B). It also reveals from record that during enquiry the second party while giving evidence before the Enquiry Officer also admitted the above charges vide his statement marked Ext. K/2.

In his evidence in chief the second party has stated that the extreme punishment of dismissal imposed on him is not sustainable in the eye of law as it would reveal from record that the enquiry officer by exceeding his limit has suggested the management to impose proper punishment to the second party and further the disciplinary authority without furnishing a copy of the enquiry report or a second show cause and without even affording him a chance of personal hearing concurred with the findings of the enquiry officer and dismissed him from service. According to him, the

action of the first party being in complete violation of the principles of natural justice, can in no way be considered legal and justified. During cross-examination the second party has stated that he has admitted the allegations made against him in the charge sheet Ext. A, but explained that such admission was on the assurance of the management that he would be reinstated in service. He also admitted in cross-examination that the stock deficit was found during reconciliation.

The Ex-Secretary of the management is examined in the case as MW 1. He stated in his evidence that during the incumbency of the second party as Branch Manager, Balasore Branch shortage of stock and cash was detected for which he was placed under suspension followed by a charge sheet. In the domestic enquiry the charges levelled against the second party having been proved the management dismissed him from service considering the gravity of the charges; his previous misconducts and prejudicial activities and moreover his admission of such misconduct during enquiry. He has fairly admitted that for his admission of the misconduct, a copy of the report of the enquiry was not furnished to him. In cross-examination he also admitted that no second show cause was also served on the second party before imposition of punishment. It is also found from his cross-examination that as a shortage of cash to the tune of Rs. 74,138.22 paise was found in the Balasore Branch, the second party was instructed vide Ext. S to deposit the shortage amount, but could not say as to if the second party had complied with such direction.

10. On an analysis of the evidence what transpires is that owing to certain misconducts of the second party while working as Branch Manager of the first party at its Balasore Branch he was charge sheeted followed by a domestic enquiry wherein he admitted his guilt and consequently visited with the punishment of dismissal from service by the Committee of Management. At the threshold the second party has challenged imposition of such punishment by the Committee of Management on the ground that the Committee of the Management was incompetent to impose such punishment on him. It is an admitted fact on record that the first party is a Primary Co-operative Society, duly registered and is functioning as per the provisions of the Orissa Co-operative Societies Act, 1962 and the Rules framed thereunder and its bye-laws. In the context, a reference may be made to Section 28 of the Orissa Co-operative Societies Act, 1962 which reads as follows :—

“28. Society to have a Committee :

(1) The management of a Society shall vest in a Committee constituted in accordance with this Act, Rules and Bye-laws, and the Committee so constituted shall exercise such powers and perform such duties as may be necessary or expedient for the purpose of carrying out its functions under this Act which shall include —

(a) the power to—

(i)	xx	xx	xx	xx
(ii)	xx	xx	xx	xx
(iii)	xx	xx	xx	xx
(iv)	xx	xx	xx	xx
(v)	xx	xx	xx	xx
(vi)	xx	xx	xx	xx
(vii)	xx	xx	xx	xx

(viii) to create posts; make service conditions; leave concessions; fixation and revision of pay and allowances of the employees and Co-operative Societies with the previous approval of the Registrar and shall have power to appoint officers and other staffs to conduct the business of the Society and determine *inter alia* their duties, disciplinary matters, subject to provisions in this regard, in the Act, Rules and the Bye-laws.

(ix)	xx	xx	xx	xx
(x)	xx	xx	xx	xx
(xi)	xx	xx	xx	xx"

In view of clear stipulation in Clause (viii) of Section 28 of the Orissa Co-operative Societies Act, 1962, the objection raised by the second party that the Committee of Management was not competent to impose punishment on him is found to be of no help to the second party.

11. The next objection raised by the second party on this issue is with regard to non-supply of a copy of the enquiry report and a second show cause. It has been forcefully argued by the learned counsel for the second party that for non-furnishing a copy of the enquiry report and second show cause to the second party prior to imposition of harsh punishment of dismissal, its action being violative of the principles of natural justice is not sustainable. The learned counsel for the management, on the other hand, argued that in absence of any prejudice shown to have been caused to the second party for non-receipt of a copy of the enquiry report and second show-cause, its action needs no interference. As per the settled proposition of law, the infirmity as pointed out by the learned counsel for the second party is, no doubt, considered as an infraction of the principles of natural justice, but at the same time it has been held by the Hon'ble Apex Court that it is for the delinquent employee to plead and prove that non-supply of copy of the enquiry report and non- communication of second show cause had caused prejudice and resulted in miscarriage of justice and if he is unable to satisfy the Court on that point, the order of punishment cannot automatically be *set aside*. The law is well settled on this point in the case of Managing Director, ECIL, Hyderabad V. B. Karunakar (*supra*), wherein their Lordships of the Hon'ble Apex Court held as follows :—

(v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is *set aside* because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Since to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice is a mechanical ritual the theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore,

even after the furnishing of the report, no different consequence would have followed, it would be perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an “unnatural expansion of natural justice” which in itself is antithetical to justice.

Hence, in all cases where the Inquiry Officer’s report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment; the Courts/Tribunal should not mechanically *set aside* the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The Courts should avoid resorting to short-cuts. Since it is the Court/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity.

It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should *set aside* the order of punishment.

(emphasis supplied)

The second party nowhere pleaded in his claim statement or stated in his evidence as to how he has been prejudiced due to non-supply of copy of the enquiry report and the second show cause notice and in absence thereof the departmental proceeding cannot be *ipso facto* vitiate. Rather, the second party is found to have admitted the imputations levelled against him during the course of enquiry. In the fact situation, therefore, this Tribunal is of the view that furnishing a copy of the enquiry report or issuance of a second show cause to the second party would not have made a difference to the result of the proceeding, hence the argument advanced by the second party on this score fails.

12. Ext. A is the charge sheet drawn up against the second party. It reveals therefrom that one of the charges against the second party was misappropriation of society funds and in course of enquiry he having admitted the charges the enquiry officer submitted his report holding the second party guilty of the charges and later on the Disciplinary Authority considering the gravity of the charges inflicted on him the punishment of dismissal from service. On a bare perusal of the charges levelled against the second party and admission thereof by the second party, the punishment of dismissal no way appears to be harsh. A reference in this context be made to the judgment of the Hon’ble Apex Court in the case of U.P. State Road Transport Corp vs Suresh Chand Sharma [Civil Appeal No. 3086 of 2007—decided on the 26th May 2010] wherein their Lordships in Para. 21 & 22 have held as follows: —

“21. In Municipal Committee, Bahadurgarh Vs. Krishnan Bihari & Ors., AIR 1996 SC 1249, this Court held as under :—

"In a case of such nature—indeed, in cases involving corruption—there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant."

Similar view has been reiterated by this Court in *Ruston & Hornsby (I) Ltd. Vs. T.B. Kadam*, AIR 1975 SC 2025; *U.P. State Road Transport Corporation Vs. Basudeo Chaudhary & Anr.*, (1997) 11 SCC 370; *Janatha Bazar (South Kanara Central Co-operative Wholesale Stores Ltd.) & Ors. Vs. Secretary, Sahakari Noukarara Sangha & Ors.*, (2000) 7 SCC 517; *Karnataka State Road Transport Corporation Vs. B.S. Hullikatti*, AIR 2001 SC 930; and *Regional Manager, R.S.R.T.C. Vs. Ghanshyam Sharma*, (2002) 10 SCC 330. In *Divisional Controller N.E.K.R.T.C. Vs. H. Amaresh*, AIR 2006 SC 2730; and *U.P.S.R.T.C. Vs. Vinod Kumar*, (2008) 1 SCC 115, this Court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption/misappropriation, the only punishment is dismissal.

22. Thus, in view of the above, the contention raised on behalf of the employee that punishment of dismissal from service was disproportionate to the proved delinquency of the employee, is not worth acceptance.

(emphasis supplied)

In view of the above, it is held that this is not a fit case where the punishment being disproportionate to the charges the Tribunal can exercise its power under Section 11-A of the Act to substitute its own finding. Accordingly, the action of the first party management in dismissing the second party from service with effect from the 25th December 2018 is held to be legal as well as justified.

The Issue No. (iii) is answered accordingly in favour of the first party.

13. *Issue No. (iv)*—In view of the finding arrived at on Issue No. (iii), the second party is not entitled to any relief.

Dictated and corrected by me.

BENUDHAR PATRA

30-11-2023

Presiding Officer

Industrial Tribunal, Bhubaneswar

BENUDHAR PATRA

30-11-2023

Presiding Officer

Industrial Tribunal, Bhubaneswar

[No. 12550—LESI-IR-ID-0188/2023-LESI.]

By order of the Governor

NITIRANJAN SEN

Additional Secretary to Government